

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 100
INCOME TAX

Section 100.2060 Compassionate Use of Medical Cannabis Pilot Program Act Surcharge (IITA Section 201(o))

- a) In general. For each taxable year beginning or ending during the Compassionate Use of Medical Cannabis Pilot Program, a surcharge is imposed on all taxpayers on income arising from the sale or exchange of capital assets, depreciable business property, real property used in the trade or business, and Section 197 intangibles of an organization registrant under the Compassionate Use of Medical Cannabis Pilot Program Act (IITA Section 201(o))

- b) Definitions. For purposes of this Section:

The “Act” means the Compassionate Use of Medical Cannabis Pilot Program Act.

An “organization registrant” means a corporation, partnership, trust, limited liability company, or other organization, but not an individual, that holds either a medical cannabis cultivation center registration issued by the Department of Agriculture under Section 85 of the Act or a medical cannabis dispensary registration issued by the Department of Financial and Professional Regulation under Section 115 of the Act.

“Transactions subject to the surcharge” means sales and exchanges of capital assets, depreciable business property, real property used in the trade or business, and Section 197 intangibles of an organization registrant. (IITA Section 201(o)) Although a unitary business group filing combined Illinois returns under IITA Section 502(f) is treated as a single taxpayer and its members are jointly and severally liable for any surcharge imposed on the group, the group itself is not an organization registrant and transactions of any member that is not itself an organization registrant are not subject to the surcharge.

- c) Imposition of the surcharge. The surcharge is imposed on any taxpayer who incurs a federal income tax liability on the income realized on a transaction subject to the surcharge, including individuals and other taxpayers who are not themselves the organization registrant that engaged in the transaction. An entity that is exempt from federal income tax and therefore incurs no liability with respect to a transaction otherwise subject to the surcharge will incur no surcharge. For example:

- 1) A disregarded entity, whose existence separate from that of its owner is disregarded under 26 CFR 301.7701-3, and a grantor trust will incur no

- federal income tax liability because income of these entities is taxed to the owner or the grantor. The disregarded entity or grantor trust will therefore incur no surcharge. Rather, the surcharge is imposed on the owner of the entity, or the grantor of the trust, who is taxable on the income from a transaction subject to the surcharge.
- 2) A partnership incurs no federal income tax liability because its income is taxed to its partners, and so will incur no surcharge. In the case of an organization registrant that is a partnership, the surcharge is imposed on each partner who is taxable on the income from a transaction of the partnership that is subject to the surcharge.
 - 3) A Subchapter S corporation will generally incur no federal income tax liability because its income is taxed to its shareholders, and so will generally incur no surcharge. However, a Subchapter S corporation subject to federal income tax on built-in gains or passive income from transactions subject to the surcharge is subject to the surcharge. The surcharge is imposed on a shareholder for income from transactions of the Subchapter S corporation that are subject to the surcharge, including transactions on which the surcharge is also imposed on the Subchapter S corporation.
 - 4) A trust will incur no federal income tax liability for transactions subject to the surcharge if the income from a transaction subject to the surcharge is distributed or deemed distributed to its beneficiaries, who are then taxed on the income. In those situations, the trust will incur no surcharge, but the beneficiary to whom the income is taxable will incur the surcharge.
- d) Amount of the surcharge. *The amount of the surcharge is equal to the amount of federal income tax liability of the taxpayer for the taxable year attributable to transactions subject to the surcharge. (IITA Section 201(o))*
- 1) The federal income tax liability attributable to transactions subject to the surcharge means the federal income tax liability of the taxpayer for the taxable year, minus the federal income tax liability of the taxpayer for the taxable year computed as if the transactions subject to the surcharge made in that year had not been made by the organization registrant.
 - 2) If taxpayer is a member of an affiliated group of corporations that files a federal consolidated income tax return, the federal income tax liability attributable to transactions subject to the surcharge means the consolidated federal income tax liability of the affiliated group for the taxable year, minus the federal income tax liability of the affiliated group for the taxable year computed as if the transactions subject to the surcharge for which taxable income or gain was recognized in that taxable year had not been made, multiplied by a fraction equal to the amount of the separate taxable

income of that member that is attributable to transactions subject to surcharge divided by the sum of the separate taxable incomes attributable to transactions subject to surcharge of all members of the affiliated group.

- e) Transactions exempt from the surcharge. Under IITA Section 201(o)(1) and (2), the surcharge does not apply to a transaction if:
 - 1) the transaction occurs in connection with the transfer of the medical cannabis cultivation center registration, medical cannabis dispensary registration, or the property of the organization registrant as a result of any of the following:
 - A) a bankruptcy, receivership, or debt adjustment initiated by or against the organization registrant;
 - B) the cancellation, revocation, or termination of the organization registrant's registration by the Illinois Department of Public Health;
 - C) a determination by the Illinois Department of Public Health that transfer of the organization registrant's registration is in the best interests of Illinois qualifying patients;
 - D) the death of an owner of the equity interest in a organization registrant;
 - E) the acquisition of a controlling interest in the stock or substantially all of the assets of an organization registrant that is a publicly traded company;
 - F) a transfer by a parent company to a wholly owned subsidiary; or
 - G) the transfer or sale to or by one person to another person where both persons were initial owners of the registration when the registration was issued; or
 - 2) the cannabis cultivation center registration, medical cannabis dispensary registration, or the controlling interest in a registrant's property is transferred in a transaction to lineal descendants or because of a transaction under Section 351 of the Internal Revenue Code, so long as no gain or loss is recognized.
- f) Special rules and provisions.
 - 1) Because the surcharge is imposed under Article 2 of the IITA, the taxpayer's surcharge liability for a taxable year is included in the tax

liability for which estimated payments must be made for that taxable year.
(IITA Section 804(f))

- 2) Because the surcharge is imposed under IITA Section 201, refunds of
overpayments of the surcharge may be made from funds in the Income
Tax Refund Fund. (IITA Section 901(d)(1))

TITLE 86: REVENUE
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PART 130
RETAILERS' OCCUPATION TAX ACT

Section 130.311 Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products

- a) General. With respect to prescription and non-prescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a disabled person and insulin, urine testing utensils, syringes and needles used by diabetics, for human use, the tax is imposed at the rate of 1%. Grooming and hygiene products do not qualify for the 1% rate, regardless of whether the products make medicinal claims. Grooming and hygiene products are taxed at the general merchandise rate of 6.25%. Beginning January 1, 2014, "prescription and nonprescription medicines and drugs" includes medical cannabis and medical cannabis infused products sold by a registered dispensing organization under the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130]. [35 ILCS 120/2-10] Medical cannabis, including medical cannabis infused products, sold by registered dispensing organizations under the Compassionate Use of Medical Cannabis Pilot Program Act, is subject to Retailers' Occupation Tax at the 1% rate, plus applicable local taxes. See NOTE. Cannabis paraphernalia is subject to Retailers' Occupation Tax at the general merchandise rate of 6.25%. NOTE: Medical cannabis is subject to tax under both the Metro East Mass Transit District Retailers' Occupation Tax (as provided in 70 ILCS 3610/5.01) and the Regional Transportation Authority Retailers' Occupation Tax (taxed at the rate established for prescription and nonprescription medicines in Cook County and at the rate established for general merchandise in all other areas of the metropolitan region that are subject to the tax, as provided in 70 ILCS 3615/4.03).
- b) Medicines and Drugs. Except for grooming and hygiene products described in subsection (c), a medicine or drug is any pill, powder, potion, salve or other preparation for human use that purports on the label to have medicinal qualities. Medicines prescribed by veterinarians for animals are subject to the high rate of tax. A written claim on the label that a product is intended to cure or treat disease, illness, injury or pain or to mitigate the symptoms of such disease, illness, injury or pain constitutes a medicinal claim.
- 1) Examples of medicinal claims that will qualify the product for the low rate of tax include, but are not limited to:
- A) "medicated";

- B) "heals (a medical condition)";
 - C) "cures (a medical condition)";
 - D) "for relief (of a medical condition)";
 - E) "fights infection";
 - F) "stops pain";
 - G) "relief from poison ivy or poison oak";
 - H) "relieves itching, cracking, burning";
 - I) "a soaking aid for sprains and bruises";
 - J) "relieves muscular aches and pains";
 - K) "cures athlete's foot";
 - L) "relieves skin irritation, chafing, heat rash and diaper rash";
 - M) "relief from the pain of sunburn";
 - N) "soothes pain".
- 2) The use of the terms "antiseptic", "antibacterial" or "kills germs" may or may not constitute a medicinal claim.
- A) The use of these terms in conjunction with a claim that the product kills germs in general does not constitute a medicinal claim.
 - B) However, a claim that a product is for use as an antiseptic to kill germs to prevent infection in cuts, scrapes, abrasions and burns does constitute a medicinal claim.
- 3) Examples of claims that do not constitute medicinal claims include, but are not limited to:
- A) "cools";
 - B) "absorbs wetness that can breed fungus";
 - C) "deodorant" or "destroys odors";
 - D) "moisturizes";

- E) "freshens breath";
 - F) "antiperspirant";
 - G) "sunscreen";
 - H) "prevents";
 - I) "protects".
- c) **Grooming and Hygiene Products.** *Beginning September 1, 2009, "nonprescription medicines and drugs" does not include grooming and hygiene products. "Grooming and hygiene products" includes, but is not limited to, soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and sun screens, unless those products are available by prescription only, regardless of whether the products meet the definition of "over-the-counter drugs". "Over-the-counter drug" means a drug for human use that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The "over-the-counter drug" label includes a "Drug Facts" panel or a statement of the "active ingredients" with a list of those ingredients contained in the compound, substance or preparation. [35 ILCS 120/2-10]*
- 1) As a result, on or after September 1, 2009:
 - A) nonprescription medicines and drugs that are grooming and hygiene products do not qualify for the 1% rate of tax for medicines and drugs under subsection (b). Grooming and hygiene products do not qualify for the 1% rate, regardless of whether the products make medicinal claims or meet the definition of over-the-counter drugs. Grooming and hygiene products are taxed at the general merchandise rate of 6.25%.
 - B) products available only with a prescription are not "grooming and hygiene products".
 - 2) Examples of products that are grooming and hygiene products include, but are not limited to:
 - A) all shampoos, hair conditioners and hair care products;
 - B) shaving creams or lotions;
 - C) deodorants;
 - D) moisturizers;

- E) breath spray;
 - F) all condoms, with and without spermicide;
 - G) baby diapers and adult diapers, pantliners and pads;
 - H) baby powder;
 - I) contact lens solutions;
 - J) hand sanitizers;
 - K) acne products;
 - L) skin creams, lotions, ointments and conditioners;
 - M) foot powders;
 - N) foot wear insoles that are intended to eliminate odor;
 - O) feminine hygiene products; and
 - P) lip balms.
- 3) The following products are not grooming and hygiene products and may qualify for the 1% rate if they meet the requirements of subsection (b):
- A) hydrocortisone creams or ointments;
 - B) anti-itch creams or ointments;
 - C) vaginal creams or ointments;
 - D) nasal sprays;
 - E) eye drops;
 - F) topical pain relievers;
 - G) ice/heat creams;
 - H) rubbing alcohol;
 - I) denture creams or adhesives; and

- J) styptic pencils.
- 4) Nonprescription medicines and drugs and products that are not grooming and hygiene products do not qualify for the 1% rate of tax unless they meet the requirements of subsection (b) of this Section.
- 5) Products that are taken orally and ingested, such as vitamins, supplements and weight gain or weight loss products, are not grooming and hygiene products.
- d) Medical Appliances: A medical appliance is an item that is used to directly substitute for a malfunctioning part of the human body.
 - 1) For purposes of this Section, an item that becomes part of the human body by substituting for any part of the body that is lost or diminished because of congenital defects, trauma, infection, tumors or disease is considered a medical appliance. Examples of medical appliances that will qualify the product for the low rate of tax include, but are not limited to:
 - A) breast implants that restore breasts after loss due to cancer;
 - B) heart pacemakers;
 - C) artificial limbs;
 - D) dental prosthetics;
 - E) crutches and orthopedic braces;
 - F) dialysis machines (including the dialyzer);
 - G) wheelchairs;
 - H) artificial limbs; and
 - I) mastectomy forms and bras.
 - 2) Corrective medical appliances such as hearing aids, eyeglasses, contact lens and orthodontic braces qualify as medical appliances subject to the low rate of tax.
 - 3) Sterile band-aids, dressings, bandages and gauze qualify for the low rate because they serve as a substitute for skin.
 - 4) Items transferred incident to cosmetic procedures are not considered medical appliances. For purposes of this Section, a cosmetic procedure

means any procedure performed on an individual that is directed at improving the individual's appearance and that does not prevent or treat illness or disease, promote the proper function of the body or substitute for any part of the body that is lost or diminished because of congenital defects, trauma, infection, tumors or disease. Cosmetic procedures include, but are not limited to, elective breast, pectoral or buttock augmentation.

- 5) Diagnostic equipment shall not be deemed to be a medical appliance, except as provided in Section 130.310(d). Other medical tools, devices and equipment such as x-ray machines, laboratory equipment and surgical instruments that may be used in the treatment of patients but that do not directly substitute for a malfunctioning part of the human body do not qualify as medical appliances. Sometimes a kit of items is sold where the purchaser will use the kit items to perform treatment upon himself or herself. The kit will contain paraphernalia and sometimes medicines. An example is a kit sold for the removal of ear wax. Because the paraphernalia hardware is for treatment, it generally does not qualify as a medical appliance. However, the Department will consider the selling price of the entire kit to be taxable at the reduced rate when the value of the medicines in the kit is more than half of the total selling price of the kit.
 - 6) Supplies, such as cotton swabs, disposable diapers, toilet paper, tissues and towelettes and cosmetics, such as lipsticks, perfume and hair tonics, do not qualify for the reduced rate.
 - 7) Medical appliances may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients or purchased directly by individuals. Purchases of medical appliances by lessors that will be leased to others for human use also qualify for the reduced rate of tax.
- e) *Insulin, urine testing materials, syringes and needles used in treating diabetes in human beings qualify for the reduced rate of tax. (Section 2-10 of the Act)*
- f) **Modifications Made to a Motor Vehicle for the Purpose of Rendering It Usable by a Disabled Person**
- 1) Effective August 17, 1995, *modifications made to a motor vehicle, as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5/1-146], for the purpose of rendering it usable by a disabled person, qualify for the reduced rate of tax* (Section 2-10 of the Act). The low rate applies to modifications that enable a disabled person to drive a vehicle or that assist in the transportation of disabled persons. Examples of such modifications include, but are not limited to, special steering, braking, shifting or

acceleration equipment or equipment that modifies the vehicle for accessibility, such as a chair lift.

- 2) For purposes of this subsection (f), the term "disabled person" has the same meaning as a "person with disabilities" in Section 1-159.1 of the Illinois Vehicle Code [625 ILCS 5/1-159.1].

g) Reporting

- 1) The retailer must keep an actual record of all sales and must report tax at the applicable rates, based on sales as reflected in the retailer's records. Books and records must be maintained in sufficient detail so that all receipts reported with respect to drugs, medicines and medical appliances can be supported.

- 2) Suppliers that sell items to health professionals must collect tax based on the actual use of the items. Health professionals that purchase items that may or may not qualify for the low rate, depending upon the ultimate use of the items by the health professionals, may provide their suppliers with certificates that identify the percentage of items being purchased that qualify for the low rate, e.g., that are purchased to be used to replace a malfunctioning part of the body. (For example, cosmetic versus reconstructive procedures.)

A) The certificate should contain the following information:

- i) The seller's name and address;
- ii) the purchaser's name and address;
- iii) a description of the medical appliances being purchased;
- iv) the percentage of the medical appliances being purchased that qualify for the low rate;
- v) the purchaser's signature or the signature of an authorized employee or agent of the purchaser and date of signing; and
- vi) if the purchaser is registered with the Department, the purchaser's Registration Number or Resale Number.

- B) A supplier that obtains a certificate from a health professional that complies with subsection (g)(2)(A) will not be liable for additional Retailers' Occupation Tax in the event the actual percentage of items purchased by the health professional that qualify for the low rate is less than the percentage claimed in the certificate if it

remitted Retailers Occupation Tax to the Department based on the information contained in the certificate received from the health professional.

(Source: Added at 34 Ill. Reg. 12935, effective August 19, 2010)

Section 130.801 General Requirements

- a) Every person engaged in the business of selling tangible personal property at retail in this State shall keep records and books of all sales and purchases of tangible personal property, including all sales and purchase invoices, purchase orders, merchandise records and requisitions, inventory records prepared as of December 31 of each year or otherwise annually, as has been the custom in the specific trade, credit memos, debit memos, bills of lading, shipping records, and all other records pertaining to any and all purchases and sales of goods whether or not the retailer believes them to be taxable under the Act; and the retailer shall also keep summaries, recapitulations, totals, journal entries, ledger accounts, accounts receivable records, accounts payable records, statements, tax returns with all schedules or pertinent working papers used in connection with the preparation of such returns, and other documents listing, summarizing or pertaining to such sales, purchases, inventory changes, shipments or other transactions. For a description of what records constitute the minimum required, including the use of machine-sensible records and electronic data interchange, see Section 130.805 of this Part.
- b) Retailers must maintain complete books and records covering receipts from all sales and distinguishing taxable from nontaxable receipts.
- c) Such books and records must clearly indicate and explain all the information (deductions as well as gross receipts) required for tax returns and shall, at all times during business hours of the day, be subject to inspection and audit by the Department or its duly authorized agents and employees.
- d) If a taxpayer retains records required to be retained under this Section in both machine-sensible and hard-copy formats, the taxpayer shall, upon request, make the records available to the Department in machine-sensible format in accordance with Section 130.805(b)(5).
- e) Such books and records must be kept in the English language.
- f) Such books and records must be kept within Illinois except in instances where a business has several branches, with the head office being located outside Illinois, and where all books and records have been regularly kept outside the State at such head office. Under such circumstances, upon written permission from the Department, books and records may be kept outside Illinois, but the taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records, papers and documents available at some point within Illinois for the purpose of such inspection and audit as the Department may deem necessary.
- g) It shall be presumed that all sales of tangible personal property are subject to tax under the Act until the contrary is established, and the burden of proving that a

transaction is not taxable shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable. In the course of any audit or investigation or hearing by the Department with reference to a given taxpayer, if the Department finds that the taxpayer lacks documentary evidence needed to support the taxpayer's claim to exemption from tax, the Department is authorized to notify the taxpayer in writing to produce such evidence, and the taxpayer shall have 60 days subject to the right in the Department to extend this period either on request for good cause shown or on its own motion from the date when such notice is sent to the taxpayer by certified or registered mail (or delivered to the taxpayer if the notice is served personally) in which to obtain and produce such evidence for the Department's inspection and audit, failing which the matter shall be closed, and the transaction shall be conclusively presumed to be taxable.

- h) All books and records kept by a medical cannabis dispensing organization under the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130/10(o)] pursuant to rules adopted by the Illinois Department of Financial and Professional Regulation to implement the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130] shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.

(Source: Amended at 24 Ill. Reg. 15104, effective October 2, 2000)

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PART 429
MEDICAL CANNABIS CULTIVATION PRIVILEGE TAX LAW

Section	
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<u>429.135</u>	<u>Books and Records</u>
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<u>429.145</u>	<u>Department's Authority to Administer the Law; Incorporation by Reference</u>

AUTHORITY: Implementing the Medical Cannabis Cultivation Privilege Tax Law and authorized by Section 215 of the Medical Cannabis Cultivation Privilege Tax Law [410 ILCS 130/215]. The Law is effective January 1, 2014, and is repealed 4 years after the effective date of the Law. [410 ILCS 130/220]

SOURCE:

Section 429.105 Definitions

“Act” means the Compassionate Use of Medical Cannabis Pilot Program Act [410 ILCS 130].

"Cannabis" has the meaning given that term in Section 3 of the Medical Cannabis Control Act [720 ILCS 550/3(a)]. [410 ILCS 130/10(b)]

“Cultivation center” means a facility operated by an organization or business that is registered by the Department of Agriculture to perform necessary activities to provide only registered medical cannabis dispensing organizations with usable medical cannabis. [410 ILCS 130/10(e)]

“Department” means the Department of Revenue. [410 ILCS 130/195]

"Designated caregiver" means a person who: (1) is at least 21 years of age; (2) has agreed to assist with a patient's medical use of cannabis; (3) has not been convicted of an excluded offense; and (4) assists no more than one registered qualifying patient with his or her medical use of cannabis. [410 ILCS 130/10(i)]

"Dispensing organization" means a facility operated by an organization or business that is registered by the Department of Financial and Professional Regulation to acquire medical cannabis from a registered cultivation center for the purpose of dispensing cannabis, paraphernalia, or related supplies and educational materials to registered qualifying patients. [410 ILCS 130/10(o)]

“Law” means the Medical Cannabis Cultivation Privilege Tax Law [410 ILCS 130/190-130/215].

“Medical cannabis” means cannabis and its constituent cannabinoids, such as tetrahydrocannabinol (THC) and cannabidiol (CBD), used as an herbal remedy or therapy to treat disease or alleviate symptoms. Medical cannabis can be administered by a variety of routes, including, but not limited to: vaporizing or smoking dried buds; administering tinctures or tonics; applying topical such as ointments or balms; consuming infused food products, such as soda or teas; or taking capsules.

"Medical cannabis container" means a sealed, traceable, food compliant, tamper resistant, tamper evident container, or package used for the purpose of containment of medical cannabis from a cultivation center to a dispensing organization. [410 ILCS 130/10(n)]

"Medical cannabis infused product" means food, oils, ointments, or other products containing usable cannabis that are not smoked. [410 ILCS 130/10(q)]

“Ounce” means 28.35 grams.

“Person” means an individual, partnership, corporation, or public or private organization. [410 ILCS 130/195]

“Qualifying patient” means a qualifying patient registered under the Compassionate Use of Medical Cannabis Pilot Program Act. [410 ILCS 130/195]

“Sales price” means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, and services, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever.

“Usable cannabis” means the seeds, leaves, buds, and flowers of the cannabis plant and any mixture or preparation thereof, but does not include the stalks, and roots of the plant. It does not include the weight of any non-cannabis ingredients combined with cannabis, such as ingredients added to prepare a topical administration, food, or drink. [410 ILCS 130/10(w)]

Section 429.110 Nature and Rate of Tax

- a) Beginning January 1, 2014, a tax is imposed upon the privilege of cultivating medical cannabis at a rate of 7% of the sales price per ounce. The tax is paid by a cultivation center and is not the responsibility of a dispensing organization, qualifying patient or designated caregiver. [410 ILCS 130/200(a)]
- b) The tax imposed under this Law shall be in addition to all other occupation or privilege taxes imposed by the State of Illinois or by any municipal corporation or political subdivision thereof. [410 ILCS 130/200(b)]
- c) The cultivation center may seek reimbursement of the tax. The charge for reimbursement may not be identified on the invoice as a tax.
- d) Tax Base
 - 1) The tax is calculated based on the sales price of the number of ounces or partial ounces of usable medical cannabis sold by a cultivation center. For example, a cultivation center sells 500 ounces of medical cannabis to a dispensing organization for \$100,000. The tax is 7% of \$100,000, or \$7,000.
 - 2) The sales price is determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever. See 86 Ill. Adm. Code 130.415 for rules regarding the treatment of transportation and delivery charges. For example, a cultivation center sells 500 ounces of medical cannabis to a dispensing organization for \$100,000 plus a delivery charge of \$250 and a fuel surcharge of \$50. The cultivation center delivers the medical cannabis to the dispensing organization. The cultivation center and the dispensing organization do not agree upon the delivery charges separately from the sales price of the medical cannabis which is sold. As a result, the cost of the delivery service is part of the "sales price" of the medical cannabis. The sales price for purposes of determining the tax is \$100,300.
 - 3) The tax is computed on the sales price of the medical cannabis sold after the application of any applicable discounts. For example, a cultivation center sells 500 ounces of medical cannabis to a dispensing organization for \$200 an ounce. The cultivation center provides a nondiscriminatory 10% discount for sales over 300 ounces. The total price with the discount is \$90,000. The tax is computed on the sales price of \$90,000.
 - 4) There is no tax on free samples of medical cannabis given to a dispensing organization by a cultivation center. However, the cultivation center will incur Use Tax liability on the cost price of the free samples of medical cannabis given to the dispensing organization. See 86 Ill. Adm. Code 150.305(c).

- 5) The tax on a package or unit of medical cannabis infused product shall be based on the weight in ounces of usable cannabis as shown on the label required by 8 Ill. Adm. Code 1000.110.
- e) A cultivation center may not either directly or indirectly discriminate in price between different dispensing organizations that are purchasing a like, grade, strain, brand, and quality of cannabis or cannabis product, provided nothing prevents differences in price which only make due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such cannabis or cannabis products are sold or delivered to such dispensing organizations. See 8 Ill. Adm. Code 1000.25(b)(7).
- f) The Law does not exempt any sales of medical cannabis cultivated by a cultivation center. All sales of medical cannabis are taxable.

Section 429.115 Registration

- a) It is unlawful for any person to engage in the business of cultivating medical cannabis in this State without a certificate of registration from the Department.
- b) Every person subject to the tax under the Law shall apply to the Department (upon a form prescribed and furnished by the Department) for a certificate of registration under this Law. Application for a certificate of registration shall be made to the Department upon forms furnished by the Department. [410 ILCS 130/205(a)]
- c) The certificate of registration which is issued by the Department to a retailer under the Retailers' Occupation Tax Act shall permit a person to engage in a business of cultivating medical cannabis under the Law without registering separately with the Department. [410 ILCS 130/205(a)] If a retailer holding a certificate of registration under the Retailers' Occupation Tax Act engages in the business of cultivating medical cannabis at another location in this State, the Department shall furnish him with a sub-certificate of registration for such place of business, and the applicant shall display the appropriate sub-certificate of registration at such place of business. The sub-certificate of registration shall bear the same registration number as that appearing upon the certificate of registration to which such sub-certificate relates. See 35 ILCS 120/2a. A certificate of registration or sub-certificate of registration issued under the Retailers' Occupation Tax Act waives the registration requirements process under subsection (d) of this Section. However, the Department may require the retailer to provide such other information as the Department may reasonably require to administer and enforce the provisions of the Law. A retailer may not engage in the business of cultivating medical cannabis until he or she is issued a certificate of registration under subsection (f).
- d) Each such application shall be signed and verified and shall state:
 - 1) the name and social security number of the applicant;
 - 2) the address of his or her principal place of business;
 - 3) the address of the place of business from which he or she engages in the business of cultivating medical cannabis in this State and the addresses of all other places of business, if any (enumerating such addresses, if any, in a separate list attached to and made a part of the application), from which he engages in the business of cultivating medical cannabis in this State;
 - 4) the name and address of the person or persons who will be responsible for filing returns and payment of taxes due under the Law;
 - 5) in the case of a publicly traded corporation, the FEIN number of the corporation, and the name and title of the Chief Financial Officer, Chief Operating Officer, and any other officer or employee with responsibility for preparing tax returns under this Act, along with the last 4 digits of each of their social security

- numbers; and, in the case of all other corporations, the FEIN number of the corporation, and the name, title, and social security number of each corporate officer;
- 6) in the case of a limited liability company, the name, social security number, and FEIN number of each manager and member; and
- 7) such other information as the Department may reasonably require.
- e) The Department may, in accordance with Section 2a of the Retailers' Occupation Tax Act, require an applicant for a certificate of registration under subsection (d), at the time of filing such application, to furnish a bond. No certificate of registration under the Law will be issued by the Department until the applicant provides the Department with satisfactory security, if required [35 ILCS 120/2a].
- f) Upon receipt of the application for certificate of registration in proper form, and upon approval by the Department of the security furnished by the applicant, if required, the Department will issue to such applicant a certificate of registration which shall permit the person to whom it is issued to engage in the business of cultivating medical cannabis in this State at the location identified on the certificate, and the certificate of registration shall be conspicuously displayed at such location. No certificate of registration issued to an applicant shall be valid after the expiration of 5 years from the date of its issuance or last renewal. For retailers possessing a certificate of registration under the Retailers' Occupation Tax Act, after review of the certificate of registration issued under the Retailers' Occupation Tax Act, the issuance of a sub-certificate of registration, if necessary, and receipt of any additional information the Department may reasonably require, the Department will issue to such applicant a certificate of registration under the Law which shall permit the person to whom it is issued to engage in the business of cultivating medical cannabis in this State at the location identified on the certificate, and the certificate of registration shall be conspicuously displayed at such location. A certificate of registration issued to a retailer shall be valid until the expiration of the certificate of registration issued to the retailer under the Retailers' Occupation Tax Act. A cultivation center must also possess a Cultivation Center License issued by the Illinois Department of Agriculture for the location prior to commencement of any activities. See 8 Ill. Adm. Code 1000.30.
- g) Any person aggrieved by any decision of the Department under this Section may, within 20 days after notice of such decision, protest and request a hearing, whereupon the Department shall give notice to such person of the time and place fixed for such hearing and shall hold a hearing and then issue its final administrative decision in the matter to such person. In the absence of such a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.

Section 429.120 Revocation of Certificate of Registration

- a) The Department may, after notice and a hearing as provided herein, revoke the certificate of registration of any person who violates any of the provisions of the Law. Before revocation of a certificate of registration the Department shall, within 90 days after non-compliance and at least 7 days prior to the date of the hearing, give the person so accused notice in writing of the charge against him or her, and on the date designated shall conduct a hearing upon this matter. The lapse of such 90 day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary.
- b) A person permitted by Section 429.115(c) of this Part to operate a cultivation center under a certificate of registration issued pursuant to the Retailers' Occupation Tax Act must cease selling medical cannabis if the person's certificate of registration issued pursuant to the Retailers' Occupation Tax Act is revoked unless and until the person obtains a certificate of registration issued pursuant to the Retailers' Occupation Tax Act or obtains a separate certificate of registration under the Law.

Section 429.125 Returns

- a) On or before the 20th day of each calendar month, every person subject to the tax imposed under the Law during the preceding calendar month shall file a return with the Department stating:
- 1) The name and address of the taxpayer;
 - 2) The taxpayer's registration number;
 - 3) The number of ounces of medical cannabis sold to dispensary organizations during the preceding calendar month;
 - 4) The total consideration received from the sale of medical cannabis;
 - 5) The amount of any credits or discounts;
 - 6) The amount of tax due;
 - 7) The signature of the taxpayer; and
 - 8) Such other reasonable information as the Department may require. [410 ILCS 130/210]
- b) The taxpayer shall remit the amount of the tax due to the Department at the time the taxpayer files his or her return. [410 ILCS 130/210] Taxpayers may be required to use electronic funds transfer to pay their tax liability. See 20 ILCS 2505/2505-310.
- c) If a taxpayer fails to sign a return within 30 days after the proper notice and demand for signature by the Department, the return shall be considered valid and any amount shown to be due on the return shall be deemed assessed. [410 ILCS 130/210]

Section 429.130 Claims and Credit Memoranda

Persons operating cultivation centers may file claims in accordance with Sections 6, 6a and 6b of the Retailers' Occupation Tax Act [35 ILCS 120/6, 6a & 6b].

Section 429.135 Books and Records

- a) Every cultivation center shall keep books and records of all sales of medical cannabis, together with invoices, bills of lading, sales records, copies of bills of sale, monthly inventories, inventories prepared as of December 31 of each year and other pertinent papers and documents. See Section 7 of the Retailers' Occupation Tax Act [35 ILCS 120/7].
- b) All books and records and other papers and documents which are required by this Section and the Law to be kept shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. Records shall be maintained at the physical location of the cultivation center. All books and records kept by a cultivation center pursuant to rules adopted by the Illinois Department of Agriculture to implement the Act shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The Department shall also have access to the cultivation center's automated data processing and/or point of sale system.
- c) Books and records and other papers reflecting gross receipts received during any period with respect to which the Department is authorized to issue notices of tax liability shall, for purposes of this Part, be preserved until the expiration of such period unless the Department, in writing, shall authorize their destruction or disposal prior to such expiration. [35 ILCS 120/7] However, if the Department allows a cultivation center to destroy books and records prior to the expiration of such period, the cultivation center is not relieved of any obligation to maintain books and records under any rule or regulation adopted by another State agency to implement the Act.

Section 429.140 Penalties and Interest

- a) All provisions of the Uniform Penalty and Interest Act which are not inconsistent with the Act shall apply [35 ILCS 735].
- b) The criminal penalties contained in Section 13 of the Retailers' Occupation Tax Act which are not inconsistent with the Law shall apply.

Section 429.145 Department's Authority to Administer the Law; Incorporation by Reference

- a) The Department shall have full power to administer and enforce this Law, to collect all taxes and penalties due under the Law, to dispose of taxes and penalties so collected in the manner in the Law and this Part, and to determine all rights to credit memoranda, arising on account of the erroneous payment of tax or penalty. [410 ILCS 130/205(b)]
- b) In the administration of, and compliance with, the Law, the Department and persons who are subject to the Law shall have the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in Sections 1, 1a, 2 through 2-65 (in respect to all provisions therein other than the State rate of tax), 2a, 2b, 2c, 3 (except provisions relating to transaction returns and quarter monthly payments, and except for provisions that are inconsistent with this Law), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 11a, 12 and 13 of the Retailers' Occupation Tax Act and Section 3-7 of the Uniform Penalty and Interest Act as fully as if those provisions were set forth herein. [410 ILCS 130/205(b)]